

## REMARKS

By the above amendment, claims 8 and 9 have been amended to recite additional features and clarify features of the present invention. Also, a new abstract has been provided. Furthermore, Figures 13 and 14 have been amended to indicate the same as "Prior Art" in accordance with the amendment in the parent application and replacement sheets are submitted herewith. Although the Examiner has indicated that the drawings filed on 18 February 2004 are accepted, acceptance of the replacement sheets is requested.

With regard to the rejection of claim 8 under 35 USC 102(b) as being anticipated by Le et al (US 6,153,115) and the rejection of claim 9 under 35 USC 103(a) as being unpatentable over Le et al (US 6,153,115) in view of Admitted Prior Art (Fig. 13, 14 and pages 1 - 11), and Kaji et al (US 6,716,300B2), such rejections are traversed insofar as they are applicable to the present claims and reconsideration and withdrawal of the rejections are respectfully requested.

As to the requirements to support a rejection under 35 USC 102, reference is made to the decision of In re Robertson, 49 USPQ 2d 1949 (Fed. Cir. 1999), wherein the court pointed out that anticipation under 35 U.S.C. §102 requires that each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. As noted by the court, if the prior art reference does not expressly set forth a particular element of the claim, that reference still may anticipate if the element is "inherent" in its disclosure. To establish inherency, the extrinsic evidence "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." Moreover, the court pointed out that inherency, however, may not be established by probabilities or

Amendments to the Drawings:

The attached sheets of drawings includes changes to Figs. 13 and 14. These sheets, which include Figs. 13 and 14, replace the original sheet including Figs. 13 and 14, now including the legend "Prior Art".

Attachment: Replacement Sheets

Annotated Sheets Showing Changes

possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.

With regard to the requirements to support a rejection under 35 USC 103, reference is made to the decision of In re Fine, 5 USPQ 2d 1596 (Fed. Cir. 1988), wherein the court pointed out that the PTO has the burden under '103 to establish a prima facie case of obviousness and can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references. As noted by the court, whether a particular combination might be "obvious to try" is not a legitimate test of patentability and obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. As further noted by the court, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.

Furthermore, such requirements have been clarified in the recent decision of In re Lee, 61 USPQ 2d 1430 (Fed. Cir. 2002) wherein the court in reversing an obviousness rejection indicated that deficiencies of the cited references cannot be remedied with conclusions about what is "basic knowledge" or "common knowledge".

The court pointed out:

The Examiner's conclusory statements that "the demonstration mode is just a programmable feature which can be used in many different device[s] for providing automatic introduction by adding the proper programming software" and that "another motivation would be that the automatic demonstration mode is user friendly and it functions as a tutorial" do not adequately address the issue of motivation to combine. This factual question of motivation is immaterial to patentability, and could not be resolved on subjected belief and unknown

authority. It is improper, in determining whether a person of ordinary skill would have been led to this combination of references, simply to "[use] that which the inventor taught against its teacher."... Thus, the Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion. (emphasis added)

In setting forth the rejection of claim 8 under 35 USC 102, and apparently similarly with respect to claims 9, the Examiner contends that the steps of converting, finding the differences and comparing are disclosed by Le et al referring to column 2, line 14 through column 3, line 65 thereof. By the present amendment, whether or not Le et al may be considered to disclose or teach finding differences between the output signals and output signals of a preceding batch, claims 8 and 9, as originally presented, recite the feature of a step of "comparing an average of the differences in one batch, a difference between a maximum and a minimum of the differences in one batch and a standard deviation of the differences in one batch with a preset threshold" (emphasis added). Applicants submit that while Le et al discloses or suggests comparing an indication of a historic-based discovered correlation with an indication of current correlation condition, such does not provide a disclosure or teaching of the step of comparing as previously recited. In order to clarify this feature, both claims 8 and 9 have now been amended to recite the feature of a step of determining an average value of the differences in one batch, a difference between a maximum and a minimum of the differences in one batch and a standard deviation of the differences in one batch, while now reciting the step of comparing the average value of the differences in one batch, the difference between the maximum and minimum of the differences in one batch and the standard deviation of the differences in one batch with a preset threshold. Such features are not disclosed in the sense of 35 USC 102 or 35 USC103 by Le et al such that

applicants submit that claims 8 and 9, as amended, patentably distinguish over Le et al and should be considered allowable thereover.

Applicants note that each of claims 8 and 9 have also been amended to recite the feature that the determination unit determines the condition in the process chamber is a determination that an end point of seasoning is reached and applicants submit that Le et al also fails to disclose or teach such feature. Thus, applicants submit that claims 8 and 9 which recite the aforementioned similar features patentably distinguish over the sense of 35 USC 102 and 35 USC 103.

With regard to the addition of the so-called Admitted Prior Art and Kaji et al to Le et al in the rejection of claim 9, the Examiner recognizes the deficiencies of Lee et al with respect to performing evacuation after a wet cleaning and automatically determining whether a degree of vacuuming is adequate. The Examiner contends that the Admitted Prior Art teaches a step of evacuating the process chamber after wet cleaning step and Kaji et al teaches an abnormality of the plasma processing is prevented in advance by issuing an abnormality signal. Assuming, arguendo, that the Examiner's position with respect to the so-called Admitted Prior Art and Kaji et al is proper, which applicants do not concede, it is readily apparent that the so-called Admitted Prior Art and Kaji et al do not overcome the aforementioned deficiencies of Le et al with respect to determining an average value of the differences in one batch, a difference between a maximum and a minimum of the differences in one batch and a standard deviation of the differences in one batch and comparison of such determined values is a preset threshold as recited in claim 9. Thus, applicants submit that this proposed combination fails to provide the claimed features as recited in claim 9, and claim 9 patentably distinguishes over this proposed combination of

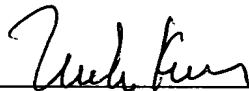
references in the sense of 35 USC 103 and should be considered allowable thereover.

In view of the above amendments and remarks, applicants submit that all claims present in this application should now be in condition for allowance and issuance of an action of a favorable nature is courteously solicited.

To the extent necessary, applicants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in the fees due in connection with the filing of this paper, including extension of time fees, to the deposit account of Antonelli, Terry, Stout & Kraus, LLP, Deposit Account No. 01-2135 (Case: 648.42568VX1), and please credit any excess fees to such deposit account.

Respectfully submitted,

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Attachments



FIG. 13 (PRIOR ART)

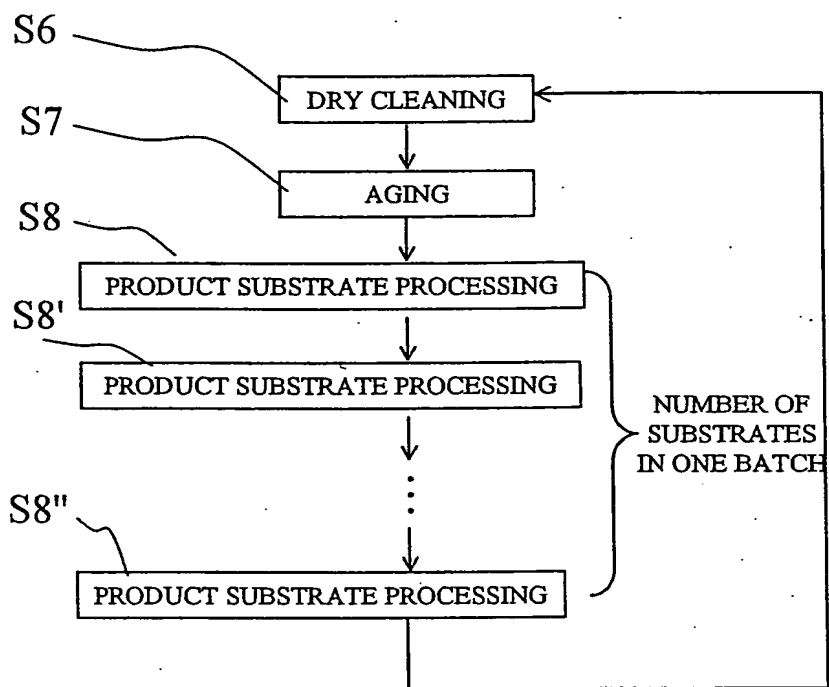


FIG. 14

(PRIOR ART)

